



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTON
ATTORNEY GENERAL**

May 7, 1990

Ms. Donna Townes
Red River County Auditor
Red River County Courthouse
Clarksville, Texas 75426

LO-90-22

Dear Ms. Townes:

You submit several somewhat overlapping questions:

1. Can the county legally buy culverts and resell them to private citizens?
2. Can the county legally buy culverts and resell them to property owners for use in accessing private property from a county road?
3. When the county purchases a steel culvert and installs it on the county right of way going onto private driveways is it legal for the property owners to reimburse the county for the cost of the steel culvert?
4. (a) When a property owner needs a culvert installed to access his private property from a county road is he responsible for purchasing the culvert or is the county responsible?

(b) To whom does the culvert belong?

We think that the answers to your questions would ultimately depend on the facts of the particular case. The county may, for example, be responsible for providing culverts where the county has installed a drainage ditch beside a county road which obstructs access to the road from property abutting the road. Generally, property abutting an existing public road carries with it a right of access to such road that may be likened to an "easement appurtenant." Such property right is covered by article I, section 17, of the Texas Constitution, which prohibits the taking of property without adequate compensation unless the owner

consents. See, e.g., State v. Meyer, 403 S.W.2d 366, 370 & 374 (Tex. 1966).

Counties under their authority to open and lay out roads may acquire the rights-of-way for such roads by dedication, purchase, condemnation, or prescriptive easement. See V.T.C.S. art. 6702-1, subch. A (the County Road and Bridge Act); 36 D. Brooks, County and Special District Law, §§ 40.7, 40.25 (Texas Practice 1989). Also, rights-of-way for drainage ditches alongside county roads may be acquired if necessary in such manners. See V.T.C.S. art. 6702-1, subch. B. Where rights-of-way acquired for roads or drainage ditches interfere with abutting landowners' rights of access, compensation for such takings may be provided for in contracts or purchase or judgments in condemnation proceedings. The county may have obligated itself to provide culverts in such circumstances as part of the consideration for the acquisition of the right-of-way or for damages incurred by the landowner as a result. See, e.g., V.T.C.S. art. 6702-1, subch. A (establishment of roads); id. subch. B (provision of drainage in connection with roads); Attorney General Opinion WW-405 (1958); O-1457 (1939).

For any particular tract, determination of whether a county drainage or road right-of-way interfered with a right of access, and whether the county has become obligated to provide a culvert, would involve questions of fact which we would be unable to resolve in the opinion process. Provisions of the right-of-way purchase contracts or of judgments in condemnation proceedings, the history of the public right-of-way involved, as well as laws in effect at the time of such judgments or contracts could have a bearing on determinations of county responsibility for providing culverts for road access from particular tracts.

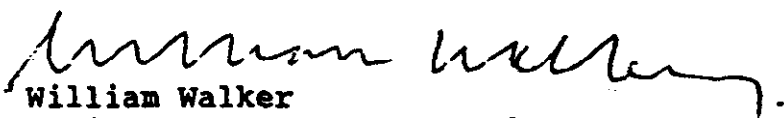
Determination in a particular case of the respective property interests in such culverts once installed would, similarly, depend in part on the factual background.

Also, even where the county has no responsibility for providing access by means of a culvert for a tract abutting a county road, the county's authority to "buy" and "resell" culverts to property owners, or obtain reimbursement therefor, would again depend on the facts of the particular case.

Under article V, section 18, of the constitution, commissioners court authority is limited to such powers and jurisdiction over "county business" as is conferred by the constitution and statutes. "County business" must further a public purpose. See County of Cameron v. Wilson, 326 S.W.2d

162 (Tex. 1959); Tex. Const. art. III, § 51. We do not think that a county's buying and reselling, or buying and obtaining reimbursement for, culverts is per se prohibited by the above provisions, even where the county has no responsibility to provide culverts. In a particular case, for example, the county may have a legitimate interest, under its article 6207-1 authority over roads and drainage, in insuring that culverts placed in a county right-of-way do not interfere with drainage or traffic. See Barrington v. Cokinos, 338 S.W.2d 133 (Tex. 1960). Providing abutting landowners with suitable culverts and obtaining proper reimbursement therefor may in such case, if all legal requirements are met, legitimately serve a public purpose and be within the scope of "county business." On the other hand, county purchase and resale of culverts in order to permit landowners purchasing them to benefit from lower prices as a consequence of a bulk purchase, or to give the county a profit on the transactions, would not, we think, in itself, serve a public purpose or fall within the scope of "county business." See, e.g., Godley v. Duval County, 361 S.W.2d 629 (Tex. Civ. App. - San Antonio 1962, no writ) (county commissioners not authorized to use county labor, equipment, material or employees for private purpose even where a profit is made); Attorney General Opinion H-1209 (1978); Attorney General Letter Advisory No. 92 (1975); see also V.T.C.S. art. 6702-1 § 2.110 et seq., (authorizing assessments to landowners for benefits they derive from county drainage systems established under that article).

Very truly yours,


William Walker
Assistant Attorney General
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WW/mc

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